No. 18-966

IN THE

Supreme Court of the United States

DEPARTMENT OF COMMERCE, ET AL.,

Petitioners,

v.

NEW YORK, ET AL.,

Respondents.

On Writ of Certiorari before Judgment to the United States Court of Appeals for the Second Circuit

AMICI CURIAE BRIEF OF HARRIS COUNTY, TEXAS, KP GEORGE, FORT BEND COUNTY JUDGE, IN HIS INDIVIDUAL CAPACITY, AND THE CITY OF MARFA, TEXAS, IN SUPPORT OF RESPONDENTS

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AMICI CURIAE BRIEF OF HARRIS COUNTY, TEXAS, KP GEORGE, FORT BEND COUNTY JUDGE IN HIS INDIVIDUAL CAPACITY, AND THE CITY OF MARFA, TEXAS, IN SUPPORT OF RESPONDENTS

Pursuant to Supreme Court Rule 37.2, Harris County, Texas ("Harris County"), KP George, Fort Bend County Judge, in his individual capacity ("KP George"), and the City of Marfa, Texas ("Marfa") respectfully submit this amicus brief in support of the respondents.[1]

IDENTITY AND INTERESTS OF AMICI CURIAE

Harris County is the most populous county in Texas, at 4,652,980 (as of 2017),[2] the third most

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[1] Pursuant to Supreme Court Rule 37.2, Amici Curiae here obtained written consent to file this brief from counsel of record for all parties as both the Petitioners and the Respondents have filed blanket consents with the Court. Pursuant to Rule 37.6, the undersigned counsel certifies that: (1) no counsel for a party authored this brief in whole or in part, (2) no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and (3) no person or entity, other than Amici Curiae or their counsel, made a monetary contribution for the preparation or submission of this brief.

[2] Unless otherwise noted all demographic statistics are from the 2017 American Community Survey 1-Year or 5-Year Estimates. *See* U.S. Census Bureau, 2017 Am. Comm. Survey, https://www.census.gov/programs-surveys/acs/data.html.

populous county in the country and, since 2010, the fastest growing of the ten most populous counties in the country. Area-wise, at 1,778 square miles Harris County is the largest county in Texas east of its old international boundary, the Nueces River. Harris County is one of the forty-eight Texas counties with more than 10% undocumented residents and has the largest raw number of undocumented people estimated to be 764,767, or the approximate size of a congressional district. While 16.9% of the County is undocumented, 26% is foreign born giving Harris County a higher ratio of undocumented and foreign-born people than plaintiffs Cameron and El Paso Counties.

The unincorporated area of Harris County, outside the City of Houston and the thirty plus other cities in the County has a population of more than two million people. If unincorporated Harris County were a city itself, it would be the second-largest city in Texas (behind Houston itself) and the fifth-largest city in the country.

As described in depth below, the Houston area is tremendously diverse and economically robust because of that diversity. More than eighty foreign governments maintain offices in Houston. Harris County contains the largest concentration of petro-chemical plants in the United States. The Port of Houston is one of the leading U.S. ports for national and international trade.

KP George was elected County Judge, the chief executive officer of county government in Texas that serves no judicial function in larger counties, of Fort Bend County in 2018. As an Indian-American

immigrant he is the first non-Anglo male to serve in that position. Fort Bend County is a large suburban county adjoining Harris County to the southwest and is one of the fastest-growing counties in the country, having grown more than 30% since 2010. Fort Bend is well educated and affluent with 45.7% of its residents holding college degrees or higher and a median household income of $93,645. Like Harris County, Fort Bend is now majority-minority but with a different mix as more than 20% of its population is Asian and only 24.5% is Hispanic. As of 1990 Fort Bend County was the most ethnically diverse county in the most ethnically diverse region in the country with a near even balance of each major demographic group: Hispanic, African American, Anglo, and Asian, making it one the most, if not the most, proportionally diverse counties in the entire country.[3] Its foreign-born population is similar in ratio to Harris County's at 27.6% (likewise higher that plaintiffs Cameron and El Paso counties but tied with Hidalgo County) but with a lower ratio of undocumented people at 12.7%.

Tiny Marfa, Texas, in the Big Bend region is the county seat of Presidio County. Its population is 1885 people out of the 7191 in Presidio County. Population growth is largely flat in the area. In high

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[3] Michael O. Emerson et al., *Houston Region Grows More Racially/Ethnically Diverse, With Small Decline in Segregation: A Joint Report Analyzing Census Data from 1990, 2000, and 2010*, Kinder Institute for Urban Research and the Hobby Center for the Study of Texas, Rice University, Mar. 1, 2012, https://kinder.rice.edu/research/houston-region-diversity-report.

contrast to Fort Bend County, Presidio is heavily Hispanic at 83.6%, with 38.6% foreign born and 28.8% undocumented. The area is poor compared to the Houston area with a median household income of only $26,486. Presidio County is much larger than even Harris County at 3,855 square miles. The area is also exceedingly rural. While Harris County has 1703 people per square mile and Fort Bend 861 people, Presidio County has only two people per square mile.

The Amici have a deep interest in a scientifically-conducted 2020 Decennial Census that is as accurate and complete as possible not only for the apportionment of congressional districts, but also for the apportionment of districts for state senate and house, county commissioners, city council, school boards, and a myriad of other local government positions. Further, the jurisdictions stand to lose their fair share of federal funds with the undercount that will result from adding the citizenship question to the Census. Moreover, effective policy making including the use of state and local funds depends on an accurate, complete count of the "whole number of persons" present in their respective jurisdictions.

Because the addition of the citizenship question to the 2020 Decennial Census will result in an undercount of each jurisdiction's significant foreign-born population resulting in disproportionately low representation at the local, state, and federal levels along with corrupt data inadequate for effective governance, Harris County, KP George, and Marfa submit this brief for the Court's consideration.

SUMMARY OF THE ARGUMENT

Harris County's growth has been vast and driven by immigrants who leveraged new industries to create economic engines for Texas and the country. Over the last few decades neighboring suburban Fort Bend County has exploded in growth, diversity, and affluence leading to the election of its first non-Anglo chief executive, Indian immigrant KP George. While the tiny City of Marfa cannot match the economic prowess of the large counties, it shares a high foreign-born population at risk for a net differential undercount in the Decennial Census.

Inflamed rhetoric and recent governmental acts of power directed against immigrants in Texas increase the likelihood of a net differential undercount should the citizenship question be added to the Census. Immigration and Customs Enforcement ("ICE") raids have retaliated against local officials and invaded state courthouses. Potential sponsors of unaccompanied minor refugees are shying away from caring for their own relatives given substantiated threats of deportation. Finally, the State of Texas through its Secretary of State, Attorney General, and Governor have threatened naturalized citizens with criminal prosecution based on false allegations that tens of thousands of non-citizens have voted illegally in Texas.

This intense climate of fear makes it all the more likely that the net differential undercount will be more acute in Texas should the citizenship question be added to the Decennial Census. In the past, such as with the decades-long practice of using "white primaries" to disenfranchise African-American

voters, this Court was the only source of protection to the constitutional rights of people wishing to engage in the civic sphere. Now, the Court's intervention is needed again, to safeguard the integrity of the data that serves as the foundation for representation and effective governance.

The Enumeration Clause, as amended, requires the counting of whole people not a lower ratio of disfavored demographics. Given the science of demography and the findings of the district court, should the citizenship question be added to the Decennial Census, such an unconstitutional lower ratio of historically disenfranchised people and a significant new differential undercount will result.

ARGUMENT

I. From urban Harris County and suburban Fort Bend County, to the tiny City of Marfa, modern Texas is diverse and economically dependent on the work and talents of immigrants.

A. Immigrants built Harris County into the most cosmopolitan, thriving, and fastest growing urban area in the country.

The history of Harris County[4] is a tale of waves of immigrants working to establish new industries from agriculture, to petroleum, space exploration, health

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[4] *See generally* Margaret Swett Henson, *Harris County*, THE HANDBOOK OF TEXAS, https://tshaonline.org/handbook/online/articles/hch07.

care and life sciences, and the current multitude of economic sectors that thrive in the greater Houston area. In the 1520s, one of the first Europeans and the first person of African descent to set foot on Texas soil, Álvar Núñez Cabeza de Vaca and the slave Estevancio, may have made their way to the area that is now Harris County to trade with Native Americans. The first significant European presence began when Stephen F. Austin brought his "Old 300" Anglo immigrants and their slaves from the Southern United States after obtaining permission from the Spanish to establish settlements in East Texas along the Brazos River in the 1820s. The area that is now Harris County was across the southeastern border of the colony, and some colonists spilled over outside of the area the Spanish designated for immigrants to found Harrisburg in 1826. In 1836, as the new Republic of Texas organized, Harrisburg County was formed, later renamed Harris County.

The flow of immigrants increased with German and French artisans, merchants, and farmers joining the Anglo farmers and ranchers along with their slaves. In 1865, approximately 2000 slaves worked the sugar and cotton plantations — the backbone of the Texas and local economy at the time. News of emancipation arrived on June 19 (inspiring the now nationally celebrated emancipation holiday, Juneteenth). Seeking opportunity Freedmen began immigrating to Houston, increasing the number of Houstonians of African descent to 6500 in less than

five years.[5] Settlements grew along railroad lines. In the 1870s, Japanese immigrants were invited to southern Harris County to develop rice farms.

Around 1905, oil was discovered in eastern Harris County. By 1919, Humble Oil, the predecessor to Exxon, built a refinery on the San Jacinto River. As this first oil boom occured, the county's voters created the Harris County Ship Channel Navigation District which dredged out Buffalo Bayou and the San Jacinto River to create the Port of Houston — which is fifty miles inland. By 1930 Harris County was the most populous in Texas and has remained so ever since. In every Decennial Census since 1850 Harris County has grown at a rapid rate, nearly doubling in population some decades and only slowing down under 20% growth during the economic bust of the 1980s.

Monroe D. Anderson was a banker and cotton merchant from Tennessee who moved to Houston in 1904 and made a fortune in the first third of the twentieth century. At his death in 1939 he left $19 million to his foundation which together with a $500,000 state appropriation and a joint purchase with the City of Houston of 134 acres of mosquito-infested forest then three miles from downtown Houston became the Texas Medical Center ("the

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[5] Scott L. Stabler, *Free men come to Houston: Blacks during Reconstruction*, HOUSTON CHRON., Feb. 10, 2016, https://www.houstonchronicle.com/local/bayou-city-history/article/Free-men-come-to-Houston-Blacks-during-6818484.php.

TMC").[6] Since 1945, the TMC has gifted or leased 113 acres to its member institutions which now include twenty-seven governmental agencies and twenty-seven not-for-profit health-care facilities which see more than seven million patients a year.

The 1960s and 1970s brought an influx of Asian immigrants along with the National Aeronautics and Space Administration. In 1970, Harris County's population was 1.7 million with 69% Anglo (non-Hispanic white), 20% African American, 10% Hispanic, and 1% Asian. By 2017, Harris County's population hit 4.6 million and its composition changed dramatically to a majority-minority county of 43% Hispanic, 30% Anglo, 20% African American, and 7% Asian.

B. Immigrants have transformed Fort Bend County, a jurisdiction with a history of racial suppression of non-Anglo political participation, into one of the most rapidly growing, educated, and affluent counties in the country.

The Brazos River bisects Fort Bend County[7] and on its banks Austin's Old 300 established their homes. The name Fort Bend derives from the deep

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[6] Alex Orlando, *Building a City of Medicine: The History of the Texas Medical Center*, Aug. 29, 2014, https://www.tmc.edu/news/2014/08/building-a-city-of-medicine-the-history-of-the-texas-medical-center/.

[7] *See generally* Virginia Laird Ott, *Fort Bend County*, THE HANDBOOK OF TEXAS, https://tshaonline.org/handbook/online/articles/hcf07.

bend in the river where a group first stopped and built a two-room cabin. A plantation economy was built on slave labor cultivating sugar, rice, and cotton, with the river providing transportation of goods to the Port of Galveston.

In the 1840 census, Fort Bend had one of the largest slave populations in Texas. In 1850, Fort Bend had a black majority. By 1860, there were twice as many blacks as Anglos. The county voted unanimously for secession. During Reconstruction, the Thirteenth, Fourteenth, and Fifteenth Amendments had force in the county as African-Americans could vote and given their superior numbers could effectively elect local officeholders who would protect them. But in 1888, the Jaybird-Woodpecker War named after racially divided voting factions erupted. The governor sent in Texas Rangers and troops resulting in a "settlement" where the Jaybirds gained control of local government by establishing the whites-only Jaybird Democratic Association and the "white primary" system for selecting state and local candidates.[8] The Jaybirds also passed a "resolution" declaring that certain African-Americans including leaders such as Thomas Lane Taylor who served as a county commissioner from 1878 to 1882, had to leave the county within ten hours.[9] Commissioner Taylor

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[8] *See* Pauline Yeldermen, *Jaybird-Woodpecker War*, THE HANDBOOK OF TEXAS, https://tshaonline.org/handbook/online/articles/wfj01.

[9] Seshadri Kumar, *First Black County Commissioner's Portrait Unveiled*, FORT BEND INDEP., Mar. 3, 2015, http://fbindependent.com/first-black-county-commissioners-portrait-unveiled-

initially resisted, but fled with his family to safety in a neighboring county.

The 1880s also brought the railroads which bisected the county near the Brazos and attracted new immigrants many of whom were German, Austrian, and Bohemian Catholics, distinct from the Anglo-Protestants from the Old 300. The Imperial Sugar Company dominated the economy for some decades but was surpassed by oil and gas production by the 1970s and 1980s. In recent decades, real estate development and high-tech companies have surged to prominence.

Even though immigrants — involuntary and voluntary — have had a long history in Fort Bend County, it was not until 2019 that a non-Anglo held its highest executive office.[10] KP George was born in Kakkodu, a village in southern India that did not have electricity. He grew up speaking Malayalam, was raised Christian and is devout to this day, lived in a straw-thatch hut, and did not own a pair of shoes until he was in the fifth grade. His father drove a truck making only a few rupees a day, but his parents' lifetime of hard work allowed an education

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p8320-1.htm#puzzle,1489,1554124859774. As of 2015, Taylor's grandsons resided on his land and his great-grandson, Eurel Taylor, was a sergeant in the Fort Bend County Sheriff's Office. *Id.*

[10] *See generally* Lisa Gray, *Indian-American K.P. George takes historic place as Fort Bend County Judge*, HOUSTON CHRON., Jan. 2, 2019, https://www.chron.com/news/houston-texas/houston/article/Indian-American-K-P-George-takes-historic-place-13498873.php.

for all seven of their children. George's parents moved to a larger town where he attended college. He learned English as an adult while working in Mumbai, later moving to New York to work in a financial firm until a job recruiter brought him to Fort Bend County. He is now a certified financial planner and the top elected official in Fort Bend County. When he first ran for public office and was asked why someone like him — brown, with no money, political power, or name recognition — was running his reply was: "Because I can. . . . I'm a citizen. Thank you, U.S. of A.! I hold your values close to my heart."

C. The Big Bend City of Marfa with its difficult to count population is particularly at risk with the addition of the citizenship question.

The City of Marfa is the county seat of Presidio County,[11] much larger than even Harris County, Texas at 3855 square miles. But its population is only 7191 with Marfa itself at 1885.[12] Although it is the county seat of a border county, Marfa is sixty miles from the U.S.-Mexican border. Ghost towns and unincorporated communities vastly outnumber

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[11] *See generally* Julia Cauble Smith, *Presidio County*, THE HANDBOOK OF TEXAS, https://tshaonline.org/handbook/online/articles/hcp08.

[12] Much of the data concerns Presidio County rather than the City of Marfa because there is little data available for so small a community.

the only two towns in the County, Marfa and Presidio.

The Rio Grande River joins with the Rio Concho along its 135-mile run on the southern border of Presidio County creating the Junto de Los Rios and an ample supply of water to feed the crops people have grown along the river since people began cultivating food in Texas. Cabeza de Vaca and Estevancio made their way from the Gulf Coast more than 500 miles to the Junto de Los Rios. The Rio Grande is a wandering river, shifting its banks with rains and regular flooding, leaving better soil in its place, and abandoning with great indifference the actual U.S.-Mexican border. This propensity has prompted several treaties and the creation of the International Boundary and Water Commission to determine where exactly the border is at any given time. The river brings people together to grow. Families grow up around it, not committed to a lifetime on either side, and most have relatives with citizenship of the country on the other side of the river.

Traveling to the corners of Presidio County is not easy. The land near the river rises to rugged desert mountains formed of volcanic rock covered with thorny shrubs and cactus but spotted with numerous springs. The northern part of the county contains the Marfa Plateau with rolling plains of grasslands that once fed bison but now feed cattle. The River Road (state highway 170) peters out upstream from Presidio to dirt. The fifty miles to Candelaria take an hour-and-a-half to traverse. Rains and floods regularly make the road further upriver unpassable to passenger vehicles. While the population is mostly

"Hispanic" in Census terms the ethnicity is a mix of Native American, Spanish and other European ancestry. In Candelaria, light-skinned Spanish-only speakers with fire-red hair can be spotted, descendants of a particularly prolific Irishman who flourished in the little community a century ago. Beyond Candelaria, a traveler is better off with an all-terrain vehicle or a horse. To travel from Presidio to the northwest corner of the county and the old Neville Ranch by car one must make the drive back up to Marfa, west on highway 90 fifty miles or so, then two-more hours on dirt ranch roads to reach the river valley again.

When Cabeza de Vaca and Estevancio came to Los Juntos, the area was occupied by Jumano and Julimes Indians. More Spaniards came in the 1600s and later, but could not fend off the Apache and the Comanches who had moved into the area after they acquired the horse. The 1850 Census reported zero people in the area although many surely lived along the river.

By 1870, area's population increased to 1636 people including 489 African-Americans, "buffalo soldiers" stationed at Fort Davis (which is now in neighboring Jeff Davis County). Silver mining brought an increase population in the 1880s and the arrival of the railroad in 1882 prompted the founding of the City of Marfa at a railroad stop. Two years later the county seat was moved from Fort Davis to Marfa. The railroad with its ready access to markets brought ranching to the local economy to supplement the farming along the river. Cotton became a profitable crop in the river valley in the early decades of the twentieth century.

In the 1910s, the population more than doubled to 12,202, fueled by refugees from the Mexican Revolution and soldiers from a newly created the U.S. military fort in Marfa. The military installation was converted into an airfield during World War II but decommissioned after the war taking the vitality of the community and beginning a slide in the county population down to 4842 in 1970.

The abandoned military facility attracted the attention of a new type of immigrant to Marfa — artists. After a New York artist bought the facilities and turned them into an art installation and foundation, Marfa became a tourism town, but it remains nestled in an economy still dominated by agriculture. Marfans are still largely Hispanic and poor, even though they can hear German, Italian, and other exotic languages spoken on city sidewalks courtesy of wealthy international tourists.

The inherent difficulties of conducting an accurate census in such a rural and impoverished area are best illustrated by the trouble Presidio had after the last Decennial Census. Presidio had hoped to become a "home-rule city" a status of greater local government power available under Texas law only to communities of more than 5000 people. *See* TEX. CONST. art. XI, § 5. Presidio was confident it had had more than 5000 residents for a few decades believing its population to be closer to 7000. But the 2010 Census returned a count of 4426. Local officials believed this to be a gross undercount as many residents did not receive a mailed census questionnaire and some Non-Response Follow Up ("NRFU") workers sent to Presidio did not speak Spanish. The City worked with the Texas State Demographer, the

San Antonio Water District, Texas Department of Community Affairs, and the U.S. Department of Housing and Urban Development to determine a more accurate count working from the water utility connections census and a conservative estimate of three people per connection. This analysis brought the population to 5232 but did not include those too poor for running water or who live off well water. While the City was able to persuade the Texas Department of Transportation to change the population on the city limits sign it has yet to achieve home rule status.

D. Immigrants drive the economy of the greater Houston area.

The Center for Houston's Future, a civic organization combining the efforts of businesses and community foundations, recently released a detailed report on the role immigrants play in the Houston area's economy. The report details the breadth of the area's diversity and dependence on immigrants in the labor force. Center for Houston's Future, *Houston's Economic Future: Immigration, a Report on the Regional Effect of Immigration*, at 4, https://www.centerforhoustonsfuture.org/immigration2019 [hereinafter *Houston's Future*].

During the 1980s and 1990s immigrants from Vietnam and Mexico dominated the immigration patterns to Houston. While Mexico continues to be the most common country of origin, the numbers have flattened out, growing only by 2% from 2010 to 2017. Now, 15% of immigrants to the Houston area come from Central America, 5% from Africa, and 25% from Asia, with most of the latter coming from India

and Pakistan. *Id.* at 14-15. During this diversification of countries of origin, the educational attainment patterns changed dramatically as well. The ratio of immigrants with less than a high school education declined from 42% to 34%, while the ratio of immigrants with a four-year degree or greater rose from 23% to 28%. Most remarkably, the percent of foreign-born Harris County residents with a graduate degree now exceeds the ratio for the native-born population at 12.5% to 11% respectively.

The ratio of undocumented has declined in recent years, dropping from 46% of the foreign-born population in 2008 down to 37% in 2016. As with the overall immigration pattern, composition of the undocumented has changed with undocumented Mexicans declining in number, while the Chinese, Nigerians, and Venezuelans have more than doubled.

This shift in diversity over the decades was largely driven by changes in immigration laws via the 1965 Hart-Celler Act, the 1986 Immigration Reform and Control Act, and the Immigration Act of 1990. *Id.* at 8-9. Immigrants in turn have driven the expansion of Houston's workforce helping spur economic growth.

Assuming a linear projection of historic trends, the Center for Houston's Future estimated that the Houston area's gross domestic product ("GDP") will hit $652.6 billion in 2036 from $411.1 billion in 2016 but if immigration is restricted that increase of $241.5 billion GDP will decrease by $51.5 billion. *Id.* at 11. On the other hand, if the future sees a higher level of migration the regional GDP will increase by an additional $67.2 billion. *Id.* Currently

immigrants comprise nearly one-third of the region's workforce. *Id.* at 10. Assuming historic trends, 57% of the jobs created in the region over the next twenty years will be filled by foreign-born workers. By 2036, immigrants will hold 43% of the region's jobs. *Id.* at 11.

Immigrants dominate the workforce not just in the construction and hospitality sectors, but also play a growing role in skilled occupations such as physicians, information technology, and engineering. In 2016, 42% of doctors and 42% of petroleum engineers were foreign born. *Id.* at 3, 19. By 2036, 46% of health care workers and 52% of IT workers will be foreign-born. *Id.* at 12. Of all science, technology, engineering and mathematics ("STEM") workers, 34% are foreign born while 61% of medical and life scientists are foreign-born. *Id.* at 19.

Immigrants are also key to the function of government. Currently approximately 15% of public administration workers are foreign born, but by 2036 more than 55% will be. *Id.* at 12. The 1.6 million immigrants in the Houston metro area paid $9.2 billion in federal and $3.5 billion in state and local taxes in 2016.[13]

In present-day Fort Bend County, as in Harris County, immigrants are driving the economy and population growth. The foreign born account for 42.6% of growth between 2012 and 2017, and while

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[13] New American Economy, *Immigrants and the economy in: Houston Metro Area*, https://www.newamericaneconomy.org/city/houston/.

only 29.1% of the total population, they provide 36.2% of the county's spending power. The foreign born are more likely to be working, self-employed, and entrepreneurs. Immigrants make up more than 40% of the workforce in the oil and gas, healthcare, professional services, manufacturing, and construction sectors, including 46.3% of all STEM workers. Most remarkably, 23.6% of Fort Bend immigrants have advanced degrees compared to 14% of the U.S. born population.[14] The Center for Houston's Future concludes that virtually no other region of the country will be affected by immigration more than Houston. *Id.* at 20.

II. Statistics cannot adequately explain the likely impact of the citizenship question given the recent political climate and assertions of government power in Texas.

When it comes to civic participation, Texas has historically not done well by its non-Anglo communities, nor has it respected the words and spirit of the Constitution's guarantees to people, citizens, or voters. The dogged resistance to ending the "white primary" system exemplifies this malady. This Court first struck down on equal protection grounds a statute prohibiting African-American participation in the primaries in 1927. *Nixon v. Herndon*, 273 U.S. 536, 541 (1927). Texas responded by enacting slightly different statutes claiming the

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[14] *See generally* Partnership for a New American Economy and the Fort Bend County Chamber of Commerce, *New Americans in Fort Bend County, TX*, (forthcoming Apr. 11, 2019), https://www.newamericaneconomy.org.

racist acts were merely private acts in a voluntary association and not state action even if they effectively decided the results of the election. *See Smith v. Allwright*, 321 U.S. 649, 657 (1944); *Grovey v. Townsend*, 295 U.S. 45, 51-52 (1935); *Nixon v. Condon*, 286 U.S. 73, 83-84 (1932). As the Court said in *Smith*, as it overturned *Grovey*: "Constitutional rights would be of little value if they could thus be indirectly denied." 321 U.S. at 664. Despite the series of decisions over decades, it was not until 1953 — nearly a century after the Civil War and twenty-five years after this Court's first "white primary" ruling — that the system finally ended when this Court struck down Fort Bend County's Jaybird Association primary and its effective elimination of meaningful input by African-American's in local and state elections. *Terry v. Adams*, 345 U.S. 461 (1953).

A. The district court's fact findings and the demographic analysis conclude that both the undocumented and Hispanics overall will be more disproportionately undercounted with the addition of the citizenship question.

With the best efforts and science, the Census suffers from both a net undercount and a net differential undercount of particular groups, namely non-English speakers, ethnic minorities, and immigrants. *New York v. Dep't of Commerce*, 351. F. Supp. 2d 502, 577 (S.D.N.Y 2019). The district court found that should the citizenship question be added to the Decennial Census, the net differential decline among noncitizen households would be harsher, at least 5.8%, and that this estimate is conservative and results could likely be much higher. *Id.* Further, the

court found that the NRFU will not improve the accuracy and will likely work less well than ever. *Id.* at 591-92.

A more recent analysis found an even greater non-response rate of 8.38% with a 95% confidence interval of 7.71% to 9.11% among Hispanics in a randomized control trial.[15] The analysis found even stronger effects than that ratio for Hispanics of Mexican or Central American origin, the very demographics the make up the vast majority of Hispanics in the Houston area and in Marfa, as 88% of Harris County Hispanics are ethnically Mexican or Central American, as are 80% of Fort Bend's and 71% of Marfa's.

Under any scenario, in the re-apportionment following the 2020 Census Texas will most likely lose a congressional seat in Congress it otherwise deserves under the Enumeration Clause if the citizenship question is added. Indeed, Harris County alone has enough undocumented people to populate an entire congressional district.

While any serious demographer would acknowledge that adding a citizenship question to the short-form census will depress the responses not only by individual undocumented people but by anyone living with an undocumented person or fearful of

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[15] Matthew A. Baum et al., *Estimating the Effect of Asking about Citizenship on the U.S. Census*, Harvard Kennedy School, Shorenstein Center on Media, Politics and Public Policy, March 2019, https://shorensteincenter.org/estimating-effect-asking-citizenship-u-s-census/.

repercussions in their community if they cooperate with the census, recent experience in the Houston area and Texas as a whole will amplify that trend given the particularly harsh political climate in Texas.

B. The treatment of immigrants is acutely felt in Texas given its history of discrimination and current government practices including threatening naturalized citizens with criminal prosecution.

From talk in the media to actions on the ground, the anti-immigrant fervor has been particularly stark in Texas over the last few years. Recent ICE tactics, treatment of child refugees and their immigrant potential sponsors, and threats of criminal prosecution of naturalized citizen voters have cast a pall over Texas immigrant communities. In early 2017, a series of high-profile ICE raids and arrests stoked fear around the state. In March 2017, ICE went so far as arresting people inside of county courthouses to widespread media coverage describing arrests of a woman seeking a protective order from domestic violence and of a young father appearing to respond to misdemeanor charges.[16] The unusual practice of

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[16] See Philip Jankowski and Tony Plohetski, *ICE in Austin: Sheriff had released immigrant arrested at courthouse*, AUSTIN AM. STATESMAN, Mar. 4, 2017, https://www.statesman.com/news/20170304/ice-in-austin-sheriff-had-released-immigrant-arrested-at-courthouse; Ryan Autullo & Taylor Goldstein, *Immigrant taken by ICE from Austin courthouse was killed in Mexico*, AUSTIN AM. STATESMAN Sept. 2, 2018, https://www.statesman.com/NEWS/20170920/Immigrant-taken-by-ICE-from-Austin-courthouse-was-killed-in-Mexico.

arresting immigrants in state courthouses came in part in retaliation against local law enforcement policies as the regional ICE director specifically directed which was revealed to members of the federal judiciary.[17] In December 2017, ICE arrested a U.S. citizen in a Harris County courtroom without presenting a warrant, handcuffing him in the jury box. Only after his attorneys and the state district judge objected did the agents check the individual's fingerprints and determine that they had the wrong person.[18] Despite a January 10, 2018, revision to ICE's "sensitive location" policy, ICE's courthouse arrests continued in Texas.[19]

In 2017, rumors began circulating among attorneys who assist refugee children in the custody of the Office of Refugee Resettlement ("ORR") that potential sponsors, many of whom are undocumented or live in homes with undocumented people, were becoming more reluctant to step forward for fear of deportation, leaving their own children unprotected

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[17] Tony Plohetski, *U.S. Judge: ICE said Austin raid was because of 'sanctuary' policy*, AUSTIN AM. STATESMAN, Mar. 20, 2017; *U.S.A. v. Coronilla-Guerrero*, No. 1:17-cr-00132-LY, Doc. 22, Hr'g Tr. at 26 (W.D. Tex. Mar. 20, 2017).

[18] Brian Rogers, *Lawyer: U.S. citizen wrongly detained by immigration agent in Houston courtroom*, HOUSTON CHRON., Dec. 15, 2017, https://www.houstonchronicle.com/news/houston-texas/article/Lawyer-U-S-citizen-wrongly-detained-by-12434021.php.

[19] *ICE arrests go too far*, HOUSTON CHRON. Feb 7, 2018, https://www.houstonchronicle.com/opinion/editorials/article/ICE-arrests-12560056.php.

or prompting the deportation of someone in their household. These rumors were well founded. In April 2018, then unknown to those who assist the refugees and the refugees themselves, ORR and ICE entered a memorandum of understanding wherein ORR would collect fingerprints of all adults in a potential sponsor's household and ICE would then review their immigration status.[20] By the fall, confirmation of the resulting deportations of potential sponsors for the children emerged.[21] Naturally, the new fingerprint and deportation policy delayed sponsorship applications and discouraged family members from offering to sponsor children. This contributed to the swell in the number of children in custody.[22]

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[20] *See* Memo. of Understanding, Apr. 13, 2018, available at Brennan Ctr. For Justice, *DHS-HHS Information Sharing and ICE Enforcement Against Potential Sponsors of Detained Children: A Resource Page*, https://www.brennancenter.org/-analysis/dhs-hhs-information-sharing-and-ice-enforcement-against-potential-sponsors-detained.

[21] Erin Durkin, *ICE arrests more than 40 people trying to sponsor migrant children: Authorities are using applications to pursue and deport would-be caretakers who are undocumented, an ICE official told Congress*, THE GUARDIAN, Sept. 21, 2018, https://www.theguardian.com/us-news/2018/sep/21/ice-arrests-undocumented-immigrants-sponsoring-migrant-children.

[22] Manny Fernandez & Caitlin Dickerson, *Inside the Vast Tent City Housing Migrant Children in a Texas Desert*, NEW YORK TIMES, Oct. 12, 2018, https://www.brennancenter.org/analysis/-dhs-hhs-information-sharing-and-ice-enforcement-against-potential-sponsors-detained.

The intensity of the anti-immigrant climate and the fear it strikes in Texas is best illustrated by a recent fiasco regarding the Secretary of State, David Whitley, who oversees elections in Texas in conjunction with county election officials. On Friday January 25, 2019, the Secretary of State issued an Elections Advisory claiming that the Department of Public Safety ("DPS")[23] had identified 95,000 non-U.S. citizens who had registered to vote and that 58,000 had voted in one or more elections. The release emphasized that voting when a person knows he or she is ineligible to vote is a second-degree felony and stated: "Upon receipt of this information, the Texas Secretary of State's office immediately provided the data in its possession to the Texas Attorney General's office, as the Secretary of State has no statutory enforcement authority to investigate or prosecute alleged illegal activity in connection with an election."[24]

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[23] DPS is both the state police and the agency that administers driver's licenses and Motor Voter registration. Under Texas law, non-citizens may obtain driver's licenses but have no obligation or reason to inform DPS when they become citizens. TEX. TRANSP. CODE §§ 521.142, 521.1425.

[24] *Secretary Whitley Issues Advisory of Voter Registration List Maintenance Activity: "Integrity and efficiency of elections in Texas require accuracy of our state's voter rolls,"* Jan. 25, 2019, https://www.sos.texas.gov/about/newsreleases/2019/012519.shtml; Tex. Sec. of State, *Use of Non-U.S. Citizen Data obtained from the Department of Public Safety*, Elec. Advisory No. 2019-02, Jan. 25, 2019, https://www.sos.texas.gov/elections/laws/advisory2019-02.shtml.

At 12:37 p.m., forty-seven minutes after the release of the Elections Advisory, the Attorney General Ken Paxton posted to twitter "VOTER FRAUD ALERT" repeating the claim that 58,000 non-citizens had voted in Texas elections.[25] His tweet was complemented by a press release promising that his "Election Fraud Unit stands ready to investigate and prosecute crimes against the democratic process when needed."[26] Barely an hour later, the Governor of Texas, Greg Abbott, amplified the message, retweeting Paxton's message at 1:57 p.m. thanking the Attorney General and Secretary of State "for uncovering and investigating this illegal vote [sic] registration. I support prosecution where appropriate."[27] The Attorney General and Governor's tweets came so quickly that the Secretary of State did not get his own tweet out announcing the advisory

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[25] Ken Paxton (@KenPaxtonTX), TWITTER (Jan. 25, 2019, 12:37 PM), https://twitter.com/KenPaxtonTX/status/10888985956533-86240; Carlos Sanchez, *Former Texas Secretary of State Believes Inaccurate Voting List Should be Rescinded*, TEX. MONTHLY Jan. 31, 2019, https://www.texasmonthly.com/politics/former-texas-secretary-of-state-believes-inaccurate-voting-list-should-be-rescinded/.

[26] *AG Paxton: Texas Secretary of State's Office Discovers Nearly 95,000 People Identified by DPS as Non-U.S. Citizens are Registered to Vote in Texas*, Jan. 25, 2019, https://-www.texasattorneygeneral.gov/news/releases/ag-paxton-texas-secretary-states-office-discovers-nearly-95000-people-identified-dps-non-us-citizens.

[27] Greg Abbott (@GregAbbott_TX), TWITTER (Jan. 25, 2019, 1:57 P.M.), https://twitter.com/GregAbbott_TX/status/108891889864-3271680.

until nearly an hour after the Governor's.[28] In the early morning hours two days later, the President of the United States weighed in, claiming "58,000 non-citizens voted in Texas, with 95,000 non-citizens registered to vote. These numbers are just the tip of the iceberg. All over the country, especially in California, voter fraud is rampant. Must be stopped. Strong voter ID! @foxandfriends."[29]

The Election Advisory was addressed to voter registrars and elections administrators at the county level who manage voter registration lists under Texas law supplying them with their individual county's list and directing them send questionable voters a Proof of Citizenship Letter and cancel the voter registration if the voter fails to respond or if the letter is returned as undeliverable. *See* TEX. ELEC. CODE § 16.0332. The Advisory also urged: "There is likely to be a law enforcement interest in the data that we are providing to you. If you receive any requests from the public for the information, please contact your local prosecutor and the attorney general, who have jurisdiction over such matters."[30]

The state officials' tweets "ricocheted across the internet for two hours" before county election officials

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[28] Texas Secretary of State (@TXsecofstate), TWITTER (Jan. 25, 2019, 2:49 PM), https://twitter.com/TXsecofstate/status/1088931929540431872.

[29] Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 27, 2019, 5:22 AM), https://twitter.com/realDonaldTrump/status/1089513936435716096.

[30] Elec. Advisory No. 2019-02.

even received the notice or the county-specific data to begin reviewing it.[31] The claims quickly fell apart under the initial scrutiny of county elections officials. By the following Tuesday afternoon officials in Harris County, which received over 30,000 of the 95,000 names, could quickly determine that at least 60% of those on the list were in fact citizens.[32] Voters began filing federal lawsuits that day which were consolidated before Judge Fred Biery in the United States District Court for the Western District of Texas.[33] The gross inaccuracies were due in large part to Texas assuming that people who were not citizens when they obtained a driver's license remained non-citizens when they later voted, despite approximate 50,000 Texans are naturalized every year, and some on the list registering to vote at their naturalization ceremonies or at DPS offices.[34]

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[31] Allie Morris, *Texas officials launched voter purge with a big splash, little accuracy*, HOUSTON CHRON. Jan. 31, 2019, https://www.houstonchronicle.com/news/politics/texas/article/Texas-officials-launched-voter-purge-with-big-13579145.php.

[32] Liam Stack, *So Far, List of Suspect Voters in Texas Turns Out to Be Mostly a List of U.S. Citizens*, NEW YORK TIMES, at A11, Jan. 29, 2019.

[33] *See Julieta Garibay et al. v. David Whitley, et al.*, No. SA-19-CA-159-FB (S.D. Tex), and *MOVE Texas Civic Fund, Jolt Initiative, League of Women Voters of Texas, and Nivien Saleh v. David Whitley et al.*, No SA-19-CA-171-FB (formerly No. 3:19-cv-00041) (S.D. Tex), consolidated with *Tex. League of United Latin Am. Citizens et al. v. David Whitley, et al.*, No. 5:19-cv-00074-FB, Doc. 39 (W.D. Tex.).

[34] Jeremy Wallace, *Texas Secretary of State acknowledges no errors in voter purge*, HOUSTON CHRON., Feb. 7, 2019,

In late February, after evidentiary hearings, the district court concluded "that there is no widespread voter fraud" and that the state sent "ham-handed and threatening correspondence" to "perfectly legal naturalized Americans" that "exemplifies the power of government to strike fear and anxiety to intimidate the least powerful among us."[35] The Secretary of State has yet to admit mistakes were made or rescind his Election Advisory, despite calls by his predecessor and others that he do so,[36] and in the face of at least one county that could not find a single non-citizen on their state-issued list of alleged non-citizen criminal voters.[37] Instead, the Secretary issued a subsequent advisory alerting county officials of the court orders and urging that voters can still be removed from voter lists for reasons independent of

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https://www.houstonchronicle.com/news/politics/texas/article/Texas-Secretary-of-State-acknowledges-no-errors-13598367.php#photo-16876124.

[35] Order, *Tex. League of United Latin Am. Citizens et al. v. David Whitley, et al.*, No. 5:19-cv-00074-FB Doc. 61, (W.D. Tex. Feb 27, 2019).

[36] Sanchez, *supra*. After his February 7 Senate confirmation hearing did not go well Whitley issued a private letter to certain senators apologizing for the lack of communication with DPS and the county registration officials but not for the threats of criminal prosecution. *See* Alexa Ura, *Texas Secretary of State apologizes for how he rolled out voter citizenship review. But he still supports the effort*, TEX. TRIBUNE, Feb. 14, 2019 (link to letter) https://www.texastribune.org/2019/02/14/david-whitley-delivered-texas-lawmakers-apology-forcitizenship-review/.

[37] Wallace, *supra*.

the erroneous list.[38] The whole episode led observers to one of two conclusions: either Whitley "recklessly release[ed]" a deeply flawed list or "he knew exactly what he was doing and purposely fanned the flames of partisan conspiracy theory about noncitizens fraudulently voting en masse. Neither should be tolerated. Nor should such antics be excused as politics as usual."[39] His acts — endorsed by the Attorney General, the Governor, and the U.S. President — threatened criminal prosecutions and sought to intimidate naturalized citizens and others from voting.

The threats of prosecution made against immigrant voters are taken seriously and with good reason. When Texas officials have been able to find actual cases of voting law violations they have prosecuted with a heavy hand. Rosa Maria Ortega, a mother of four who had served as a poll worker and voted for the very attorney general who prosecuted her, received an eight-year prison sentence after mistakenly believing her permanent resident status enabled her to exercise the civic duty to vote.[40] Laura

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[38] Tex. Sec. of State, *Court orders in pending litigation involving non-citizen list maintenance*, Elec. Advisory No. 2019-03, Mar. 4, 2019, https://www.sos.texas.gov/elections/laws/advisory2019-03.shtml.

[39] *Reject David Whitley as Secretary of State* [Editorial], HOUSTON CHRON. Feb. 6, 2019, https://www.houstonchronicle.com/opinion/editorials/article/Reject-David-Whitley-as-Texas-secretary-of-state-13595897.php.

[40] Jane C. Timm, *Texas woman with four children gets eight years in jail for voter fraud*, NBC NEWS, Nov. 28, 2018,

Janeth Garza, a Mexican national who lived and registered to vote under the identity of a U.S. citizen, received a ten-year sentence.[41] Moreover, women and Hispanics make up a disproportionate portion of the cases prosecuted in Texas. Over a thirteen-year period from 2005 to 2018 at least seventy-three cases were brought against defendants, 74% of which had Spanish surnames and 66% of which were women, but only four involved voting by non-citizens.[42]

The Center for Houston's Future study also reveals the reality of fear on the ground. The Center held roundtable discussions with leaders in various economic sectors. The hospitality sector reported that the increasingly restrictive immigration policies produced an environment where many workers "live in the shadows, afraid of being identified without documents" and that Texas' anti-"sanctuary cities" law passed in 2017, S.B. 4, has made undocumented individuals afraid to work all of which has resulted in such labor shortages that restaurant and hotel openings are often delayed for lack of workers. *Houston's Future* at 28. Interviews in the health care

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https://www.nbcnews.com/politics/elections/texas-mother-four-gets-eight-years-jail-voter-fraud-n941261.

[41] Jeremy Wallace, *Mexican national pleads guilty to illegal voting in Harris County* , HOUSTON CHRON., Sept. 13, 2018, https://www.houstonchronicle.com/news/politics/texas/article/Mexican-national-pleads-guilty-to-illegal-voting-13228190.php.

[42] Robert Brischetto, *Texas' desperate search for fraudulent voters*, SAN ANTONIO EXPRESS NEWS, Mar. 9, 2019, https://www.mysanantonio.com/opinion/commentary/article/Texas-desperate-search-for-fraudulent-voters-13674630.php.

sector with leaders from the TMC[43] produced harsher results. Undocumented patients are delaying health care for fear of deportation after seeking treatment and some institutions have seen a 20% drop in CHIP prenatal program participation because immigrant mothers have dropped out. This increased ER deliveries with no prenatal care. *Id.* at 29. International patient visits have historically been profitable for TMC institutions, but one reported a 50% drop in patients from the Middle East. *Id.* The fear and intimidation bodes ill for medical research as well. One TMC institution reported that 92% of its biomedical researchers are foreign born. *Id.*

When immigrants are afraid to seek prenatal care and other vital health care or go to work, they will certainly be afraid to answer questions from the government about citizenship status of themselves, others in their household, or their neighbors. The vehemence with which Texas prosecutes voting violations and its focus on non-citizens, women, and minorities naturally suppresses the participation in civic duties by those populations — including the most basic duty of being counted in the Decennial Census. This political context is not unique to Texas, but certainly more intense than in other states around the country.

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[43] The world's largest medical center, the TMC is a major economic engine in its own right ranking as the eighth largest downtown business district right behind Philadelphia and Seattle. Orlando, *supra*.

III. Adding the citizenship question will depress responses, undercount the people, and harm the amici's interests in the representation and safety of their people.

Historically, without the courts' protection, the rights of Texas minorities would have been subject to unfettered trampling. Now, the rights of the majority of Texans are at great risk unless the courts step in to uphold the rule of law.

The Constitution as originally enacted and as amended made some precise choices about persons, people, and citizens. The Enumeration Clause embodied the so-called "three-fifths compromise" with slave states regarding enumeration and representation:

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

U.S. CONST. art. II, § 2, cl. 3. The Enumeration Clause did not specify citizens or property owners, but settled on Persons, including indentured servants, but counting slaves by a three-fifths ratio, and excluding untaxed Native Americans.

This distinction that "persons" should be counted is made more apparent by the plain language of the changes to the Enumeration Clause made by the Fourteenth Amendment:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

U.S. CONST. amend. XIV, § 2. The drafters chose the word "persons" in the "whole number of persons in each State" for enumeration, not "citizens" as used in the next clause.

Throughout the Constitution, the Framers knew how to distinguish between people or persons and citizens. *See* U.S. CONST. art. II, § 1, cl. 5 (presidential qualifications); U.S. CONST. amend. XV, § 1 (citizens right to vote without regard to race or servitude); U.S. CONST. amend. XIX (citizens right to vote without regard to sex); U.S. CONST. amend. XXIV (citizens right to vote without poll taxes); U.S. CONST. amend. XXVI (citizens right to vote extended to citizens eighteen and older). Should the Census proceed with a knowing — and likely purposeful — the undercount of Hispanics, the foreign-born, and the undocumented, then representation will not be by the "whole person" but instead some lower ratio for those very demographic groups — politically

disfavored immigrants — that have been historically and at times violently discouraged from civic life. That ratio may not be as low as three-fifths but certainly will not be equal.

Any such purposeful or known net differential undercount will harm the interests of Amici here. Harris County currently contains four complete congressional districts (the Texas 2nd, 7th, 18th, and 29th), most of another (Texas 9th), and parts of four more (Texas 8th, 10th, 22nd and 36th). Fort Bend County contains most of the 22nd and a small part of the 9th. Given its raw population growth since 2010 of more than half a million people, Harris County is on track to gain an additional congressional seat. Fort Bend has grown by more than 200,000 people which warrants an additional state house seat and now totals 764,828 warranting an entire congressional seat.

Further, the Census provides the underlying data of governing. Texas law defines "population" as that in the most recent Decennial Census and often "brackets" statutes to only apply to certain ranges of population. *See* TEX. GOV'T CODE § 311.005(3). A myriad of government functions and powers are triggered by the Decennial Census from elections for countywide taxation for public education, TEX. EDUC. CODE § 18.07, to designation as a homestead preservation district and reinvestment zone, TEX. LOC. GOV'T CODE § 373A.052, to regional transportation authority creation, taxation and representation, TEX. TRANSP. CODE ch. 452, to representation on the Big Bend Regional Hospital District board, TEX. SPEC. DISTS. CODE § 1007.051, to provision of bilingual ballots and educational

material for voting, TEX. ELEC. CODE § 272.003, to application and qualification for grants for a home-delivered meals for the elderly and disabled, TEX. AGRIC. CODE § 12.042, to participation in a statewide rural health care system, TEX. INS. CODE § 845.003, to whether municipal and county hospital districts may operate nursing homes, TEX. HEALTH & SAFETY CODE §§ 262.034, 285.101, and even to how late in the night one can buy beer, TEX. ALCO. BEV. CODE § 105.05, just to name a few examples.

While redistricting may by necessity be political, the census, as the backbone of our most basic of governmental institutions apportionment and voting, should not be. Inaccuracies will infect not only the political process, but also innumerable policy making decisions that depend on accurate data. Quite simply, policy makers must have accurate data to do their jobs. They must know how many people have to be moved to safety if another hurricane pummels the Gulf Coast or wildfires threaten the City of Marfa. They must know population densities and composition should an industrial accident threaten the health and lives of a neighborhood near the Port of Houston or when spring or fall rains trigger widespread flooding in the former rice fields of Fort Bend County. They must know exactly how many and where people live to draw evenly apportioned districts for local offices such as county commissioners, school boards, hospital districts, and innumerable other local governmental entities.

The district court rightly found a series of misdeeds and violations of the Administrative Procedure Act ("APA") by Secretary Wilbur Ross and the Department of Commerce. *New York*, 315 F.

Supp. 2d at 660-64. The APA's safeguards on raw government power and unsubstantiated or patently partisan agency actions is an important function in our system of checks and balances. Without the courts enforcement of checks and balances, the rule of law has little meaning and the rights of citizens to good government are rendered illusory. Secretary Ross's actions in demanding the addition of the question weeks into his tenure, gaming the pretextual request for the alleged enforcement of the Voting Rights Act, and shutting down any legally required and scientifically-based review by Census staff are both as perverse and transparent as Secretary Whitley's actions in attempting to purge naturalized citizens from the voter rolls under threats of criminal enforcement.

The Amici Curiae here, Harris County, Fort Bend County Judge KP George, in his individual capacity, and the City of Marfa all have an intense interest and need in an accurate, de-politicized Decennial Census where scientific methods are not infected by politics so that they may effectively exercise the day-to-day functioning of government.

* * *

We have been here before. As with the white primary cases, the People of Texas, now speaking through local government and its leaders, are asking this Court to protect the most basic infrastructure of democracy. While voting is the most fundamental of rights the Decennial Census is the science and the data underlying that right and governing itself. Partisan and sectarian forces may not corrupt it.

CONCLUSION

The decision of the lower court should be affirmed.

Respectfully submitted,

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